



GEDLING BOROUGH COUNCIL

INTERNAL AUDIT REPORT

ENVIRONMENTAL HEALTH SERVICES & ENFORCEMENT - WARDEN ENFORCEMENT
OCTOBER 2022

LEVEL OF ASSURANCE	
Design	Operational Effectiveness
Limited	Moderate

IDEAS | PEOPLE | TRUST



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DISTRIBUTION

Mel Cryer	Head of Environment
Kevin Nealon	Community Protection Manager

REPORT STATUS LIST

Auditors:	Lucy Burgum
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Final report issued:	5 th October 2022

EXECUTIVE SUMMARY

LEVEL OF ASSURANCE: (SEE APPENDIX II FOR DEFINITIONS)

Design	Limited	System of internal controls is weakened with system objectives at risk of not being achieved.
Effectiveness	Moderate	Evidence of non compliance with some controls, that may put some of the system objectives at risk.

SUMMARY OF RECOMMENDATIONS: (SEE APPENDIX II FOR DEFINITIONS)

High	0
Medium	3
Low	0

TOTAL NUMBER OF RECOMMENDATIONS: 3

CRR REFERENCE:

Risk 10: Failure to maintain service standards, customer satisfaction, and/or meet customer expectations.

BACKGROUND:

Environmental health covers all aspects of the natural and built environment that may impact on human health and wellbeing. Environmental health services are typically responsible for carrying out measures for the protection of public health including administering and enforcing legislation related to Environmental Health and provides support in minimising and addressing health and safety hazards.

At Gedling Borough Council ('the Council') environmental health covers:

- Pest control
- Dead animal removal from roads and public places
- Food safety/poisoning
- Air pollution monitoring and reporting
- Stray dogs
- Contaminated land
- Infectious disease
- Smoke control.

The Environment and Licensing Committee is responsible for all non-executive functions of the Council regarding Environmental Health.

The Council has a Public Protection Enforcement Policy statement which sets out what businesses, residents and the community can expect from the Council's enforcement approach and procedures. The primary function of the enforcement work is to protect the public and the environment. At the same time equitable and consistent enforcement maintains a level playing field for local businesses as well as the Council's service users. Enforcement options include:

- Written and verbal advice
- Reference to another enforcement agency
- Written warning
- Statutory notice
- Fixed penalty notice
- Prohibition
- Works in default
- Simple caution
- Suspension or revocation of licence
- Prosecution.

The 'Public Protection - Environment' Service Area consists of several Service Teams including but not limited to Food, Health and Housing and Community Protection. This audit focussed on the environmental health services of Selective Licensing which sits within the Food, Health and Housing Service Team and Warden Enforcement for dog fouling, antisocial behaviour and fly-tipping which sits within the Community Protection Service Team. We have split the review into separate audit reports, one for each

area, to reflect the difference in operations and nature of the findings between the service areas. From hereon we will only reference to the review carried out on the Community Protection Service Team for Warden Enforcement for dog fouling, antisocial behaviour and fly-tipping. Please see the corresponding audit report for the findings in relation to the Selective Licensing Service team.

Warden Enforcement for dog fouling, antisocial behaviour, and fly-tipping (referred to from here on as 'Warden Enforcement') sits within the Community Protection team and is undertaken by officers including but not limited to Community Safety Officers, Environmental Health Officers, Anti-social Behaviour Co-ordinators and Neighbourhood Wardens.

The environmental officers are responsible for dealing with service requests, carrying out enforcement activity and attending events/ campaigns. There is not currently an Environmental Enforcement Policy in place to guide officers in performing enforcement activity across Warden Enforcement activities. A draft Environmental Enforcement Policy has been written and is currently awaiting approval.

TESTING APPROACH

Service Requests: From 1 July to 31 December 2021, there were 630 service requests recorded on Uniform for Anti-social Behaviour, 92 for Dog Fouling and 871 for Fly Tipping. We selected a sample of five service requests for each area giving a total sample of 15 service requests. We then extended this sample by one for both fly-tipping and anti-social behaviour service requests during testing to ensure a broad range of officers were observed. We reviewed these service requests to ascertain whether they were appropriately prioritised, investigated and managed.

Enforcement Activity: Between 29 September 2021 and 10 March 2022, 37 enforcement notices were issued for dog fouling, anti-social behaviour, and fly-tipping incidents by three members of the Community Protection team. Since April 2021, one further dog fouling and two further fly-tipping Fixed Penalty Notices (FPNs) were recorded on Uniform. We selected a sample of two anti-social behaviour, two fly-tipping and one dog fouling enforcement activities and reviewed these to ascertain whether they were carried out in accordance with the relevant legislation, scheme of delegations and enforcement guidance.

GOOD PRACTICE:

- **Performance Dashboard (Warden Enforcement)** - The Community Protection team uses the Council's performance system, Pentana, to monitor Key Performance Indicators (KPIs) relating to dog fouling, anti-social behaviour and fly-tipping service requests and enforcement activity. For example, percentage of fly tipping incidents removed within four working days is monitored. The Council have a target of 98% and in Q3 of 2021/22 a score of 98.55% was achieved. Most other metrics monitored do not have targets but are monitored against trends over time instead. For example, the team track the number of litter and dog fouling FPNs served. In Q3 of 2021/22, 17 were served which was an improved position in comparison to the short term and long-term trends
- **Training** - Training on Investigation and Case Building was provided to all public protection officers in December 2020 covering key areas of legislation, powers to investigate and collection of evidence
- **Enforcement Activity** - We tested a sample of two enforcement notices granted in respect of fly-tipping, two for anti-social behaviour and one for dog fouling over between April 2021 and February 2022 and found they were all issued in line with enforcement guidance, legislation and the Council's Scheme of Delegation.

KEY FINDINGS:

- We tested a sample of service requests and found these were not adequately recorded with a description of the resolution not documented in Uniform for five out of 17 (29%) service requests sampled, despite this being part of the documentation process. Furthermore, monitoring in place for service request performance could be improved (**Finding 1 - Medium**)
- We found that Risk Assessments are not consistently managed and reviewed. Officer Health & Safety Training is not regularly updated in line with refresher dates and enforcement training records are not held centrally (**Finding 2 - Medium**)
- No specific Environmental Enforcement Policy was found to be in place to provide guidance on dog fouling, anti-social behaviour, and fly-tipping enforcement activity (**Finding 3 - Medium**)

ADDED VALUE

We have identified an example of good practice from another Council which Gedling may wish to consider in relation to Finding 3. The Council have developed an environmental enforcement policy which clearly outlines authority to investigate, choice of appropriate enforcement activity, fixed penalty levels and definitions of environmental offences and legislation. We have provided a copy of this for consideration in Appendix I.

CONCLUSION:

Our review has identified several significant gaps in procedures and controls in key areas of enforcement although we are aware that the Council is in the process of implementing an Environmental Enforcement Policy which has been written but is awaiting ratification. We have made recommendations that should be implemented to improve the quality of the Council's overall internal control framework and operational effectiveness of the controls. This has led us to our opinion of limited assurance over control design and moderate assurance over operational effectiveness.

DETAILED FINDINGS

RISK: REPORTED INCIDENTS OR COMPLAINTS RELATING TO SELECTIVE LICENSING AND WARDEN ENFORCEMENT ACTIVITIES ARE NOT APPROPRIATELY PRIORITISED, INVESTIGATED OR MANAGED

Ref	Significance	Finding
1	Medium	<p>The 2014 Regulator's Code states that regulators should base their regulatory activities on risk and risk should be considered in every stage of the decision-making process. The Council should ensure that enforcement activity for Warden Enforcement is planned and carried out following a risk-based approach.</p> <p>The Gedling Public Protection Enforcement Policy provides high level enforcement guidance for the Council, and this states that regulatory activities will be based on risk. However, the Community Protection Service Area do not have an Environmental Enforcement Policy or formal procedure to guide officer work prioritisation.</p> <p>We tested a sample of six fly-tipping, six anti-social behaviour and five dog fouling service requests to ascertain whether they were appropriately prioritised, investigated and managed and found:</p> <ul style="list-style-type: none"> • No formal evidence that service requests were prioritised in terms of risk. We have been advised that officers are professionals and have the skills, knowledge, and expertise to prioritise work and continuously undertake a dynamic risk assessment when work is received, but this process is not documented • Four of six (67%) fly tips sampled were not removed within four working days in line with the performance target with the average removal time for the six fly tips sampled being 23 days. Three fly tips were not removed within the performance target and were removed within five, seven and 36 working days. No removal details were given about one sample and the file was closed after 91 days. This may have been removed in line with the performance target but, as no date is documented in Uniform, we can only infer that this took up to 91 days. The two longest fly tip removals related to asbestos incidents and a specialist party was required for collection which caused delays. Despite this finding, during Q3 2021/22, the percentage of fly tipping incidents removed within four working days at the Council was 98.6%, above the target of 98% • For five of 17 (29%) service requests, a description of the resolution was not recorded in Uniform despite this being part of the documentation process. <p>We found that the Service Team have developed 10 performance indicators which are recorded on a performance dashboard, two of which are in relation to service requests; percentage of fly tipping incidents removed within four working days and percentage of public protection requests for service responded to within two working days. We were advised by management that the service request resolution metric is not monitored as resolution times vary depending on the nature of the case. The performance indicator for percentage of fly tipping incidents removed is reported to the Senior Leadership Team (SLT) quarterly as part of the Council's performance indicator report but there is not a formalised monitoring process below SLT. We have been informed that performance is discussed at management meetings and informal meetings are held with the Community Protection Service Team Manager, Head of Environment and Senior Neighbourhood Warden to discuss performance. However, performance is not a set item on the agenda at management meetings and the informal meetings are not documented or minuted.</p> <p>Reliance is placed on officer experience to enable them to prioritise work and there is a risk that if these officers leave or retire sufficient guidance is not in place. Errors in documenting Service Requests on Uniform and limited performance monitoring exacerbate this risk as management are less able to identify trends in enforcement activity or high-risk cases which may have been overlooked and not resolved in a timely manner.</p>

RECOMMENDATION:

- a) The Council should develop an Environmental Enforcement Policy which includes a statement that the Council is committed to delivering regulatory activities in a manner that is risk-based, proportionate and consistent. The Council should consider including a formal procedure to guide officer work prioritisation
- b) The Council should implement regular performance monitoring that identifies:
 - a. Number of cases that have not been responded to in the two-day period
 - b. Number of cases that have not been closed in the appropriate timeframe as set by the Council
- c) Access reports should be developed to extract key information on service requests for discussion at team meetings and reasons should be provided for exceptions. These should be monitored by the Head of Environment. We would suggest that this is carried out on a fortnightly basis to begin with until the backlog has been cleared. Following this, monitoring should be carried out at least monthly
- d) The Council should send a reminder or provide refresher training to staff detailing the importance of documenting service requests correctly
- e) The Service teams should implement management spot checks on five service requests a month to ensure they are being filled out appropriately.

MANAGEMENT RESPONSE:

Officers are drafting a comprehensive Environmental Enforcement Policy and this should be adopted soon but do not feel that a formal procedure to guide officer work prioritisation will be practical due to the wide variety of jobs undertaken and detailed dynamics and variable influences which can influence the importance of jobs .

For point three I agree and have taken steps to ensure that information regarding the two day target and closing jobs will be produce and discussed with the wider team ever two weeks to begin with and monthly when backlogs have been cleared. I do however belief that due to the nature of the work involved it is not possible to clear all backlogs all of the time.

I will arrange to send a reminder about documenting service requests correctly and will carry out spot checks on five service requests a month.

Responsible Officer b), c), e) Community Protection Manager
 a), d) Head of Service, Environment

Implementation Date 31 March 2023

RISK: THERE ARE LACK OF FORMAL H&S PROTOCOLS, RISK ASSESSMENTS AND TRAINING WITHIN WARDEN ENFORCEMENT AND SELECTIVE LICENSING ACTIVITIES WHICH COULD LEAD TO UNSAFE PRACTICES

Ref	Significance	Finding
2	Medium	<p>The Council has Health & Safety (H&S) measures in place including risk assessments and training. Risk Assessments are carried out and stored on the Council's AssessNET system. Risk Assessments are created, reviewed, signed off and issued with a next review date listed. Risk Assessment templates are provided which include a <i>'Required measures to lower the current risk of injury'</i> section listing the nominated person to manage the task, the progress status and the date it is due to be implemented by. H&S training is provided to all employees and staff involved in enforcement should receive appropriate training in the Regulation of Investigatory Powers Act 2000 (RIPA) requirements.</p> <p>We reviewed the risk assessments and training for the Community Protection Service Team and found:</p> <p><u>Risk assessments</u> We found:</p> <ul style="list-style-type: none"> • The <i>'Re-occupation of Council premise'</i> risk assessment included a total of 28 <i>required</i> measures to address risks identified. Of these 28 measures, 19 were completed, with two remaining active and seven pending. <ul style="list-style-type: none"> ○ The two active and seven pending measures all had due dates listed but eight of these were overdue. The two overdue active measures had due dates of 28 June 2021, and the six overdue pending measures had due dates of 1 October 2021. For the two overdue active measures, required measures consisted of <i>Regular legionella testing and flushing of water systems</i> and <i>Regular fire testing / planned training for managers to be cascaded to staff</i>. For one pending measure, the required measure was <i>training to be provided by Estates Team in terms of testing the alarms and equipment</i> and for another it stated <i>Staff have worked throughout the pandemic at times in the office. No further action required</i> ○ The required measure description of the five remaining overdue <i>'pending'</i> measures stated <i>'same as previous'</i> or <i>'no further action required'</i> making it difficult to review if appropriate measures had been selected • The <i>'Community Safety, Pollution EHO, Licensing, NW and Contaminate Land officer visiting'</i> risk assessment did not have a reviewer assigned, a next review date listed, or an issue date given • The <i>'Covid 19 Return to Winter Plan A'</i> risk assessment was created on 2 February 2022 with the next review scheduled for 18 February 2022. However, it has not yet been signed off or issued. <p>It has been noted that these omissions occurred during Covid-19 where the Council experienced unusual operating circumstances and restructuring of the organisation.</p> <p><u>Training</u> H&S training is not refreshed in line with scheduled refresher dates. The Corporate H&S Training log showed five of six employees reviewed had surpassed their refresher dates, with the last documented training dating back to 2008 for one employee.</p> <p>In our audit, we were unable to establish officer eligibility for enforcement related training courses and who had completed RIPA training due to an inability to locate the training attendance documents. We are aware completion certificates were not issued that the department could keep on file.</p> <p>However, we have seen an attendance log confirming that all public protection enforcement officers bar two, attended an investigation and case building training session in December 2020. The two officers not in attendance requested a recording of the training. A review of the training slides confirmed that it covered powers to investigate, legislation, how to approach an offender, collection of evidence and prosecution.</p>

Officers are expected to maintain their own training records and attend courses that become available as and when required. Some assurance is provided to the Council, as qualified officers are required to complete Continuous Professional Development online through their professional bodies.

Where risk assessments are not regularly reviewed, there is a risk that H&S is not being effectively managed at the Council, risks are not adequately considered in practice, and this could potentially lead to inappropriate working practices. There is a risk that if training records are not held centrally and reviewed by management regularly, officers could receive inadequate, infrequent training and this could lead to risks of legislation non-compliance. We have raised this as a medium finding as due to the experience of the team and that there is a good knowledge of health and safety and enforcement practices.

RECOMMENDATION:

- a) Service teams should carry out a review of all risk assessments and check that sufficient detail is included for the *'required measures'* listed and any outstanding measures are implemented
- b) The Head of Service should identify and record training eligibility and also log training completed, dates completed and scheduled review dates for all officers
- c) The Head of Service should ensure completion certificates are provided for all internal training courses attended and these are kept on file within the service team's training log.

MANAGEMENT RESPONSE:

Training record keeping was discussed at an extended departmental management meeting with Organisational Development and it was suggested each service should keep their own records. The Community Protection manager will set up a folder for filing training records.

Responsible Officer	a) Head of Service, Environment b) c) Community Protection Manger
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Implementation Date	31 March 2023
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RISK: ENFORCEMENT PROTOCOLS HAVE NOT BEEN DEFINED, INCREASING THE RISK OF INAPPROPRIATE MANAGEMENT PRACTICES

Ref	Significance	Finding
3	Medium	<p>The Council is required to have enforcement policies under the 2014 Regulator's Code. The Code states that regulatory activities should be carried out in a way, which is transparent, accountable, proportionate, and consistent.</p> <p><u>Warden Enforcement</u></p> <p>At a minimum the Council should have an Environmental Enforcement Policy in place which sets out authority to investigate, choice of appropriate enforcement activity, fixed penalty levels and definitions of environmental offences and legislation.</p> <p>The Council has a high-level Public Protection Enforcement Policy statement which covers what businesses, residents, and the community can expect from the Public Protection Service's enforcement approach and procedures. However, the Community Protection Service Area do not have an enforcement policy or formal procedures outlining their approach to manage dog fouling, fly-tipping and anti-social behaviour incidents. We are aware that an Environmental Enforcement Policy has been drafted and is awaiting Council approval but currently there is only limited enforcement guidance in place for dog fouling and fly-tipping and no guidance for anti-social behaviour. The Service Team rely on officer experience and manager/senior guidance to carry out enforcement activity.</p> <p>We also found during our sample testing of service requests to ascertain whether they were appropriately prioritised, investigated and managed, that one of five dog fouling requests sampled may not have been managed in line with the limited enforcement guidance in place. Although this was not in our sample for enforcement activity, we highlighted this to the attention of management. We were advised that whilst enough evidence was recorded on file to issue a Fixed Penalty Notice, this was not executed, and no notes were documented in justification.</p> <p>There is a risk that without an enforcement policy outlining the approach for addressing dog fouling, fly-tipping and anti-social behaviour, incidents will not be managed effectively and consistently, and appropriate enforcement may not be carried out. There is also a risk that if experienced staff members leave or retire, this may result in both knowledge gaps and an inability to adequately train new staff members.</p>

RECOMMENDATION:

- a) In tandem with Recommendation 1a, to develop an Environmental Enforcement Policy detailing as a minimum authority to investigate, choice of appropriate enforcement activity, fixed penalty levels and definitions of environmental offences and legislation. We have included a good practice example of an enforcement policy in Appendix I for consideration

The policy should also set out how enforcement activity will be prioritised, as mentioned in Finding 1, to aid the Council in basing their regulatory activities on risk in line with the Regulator's Code.

MANAGEMENT RESPONSE:

The policy is being drafted.

Responsible Officer: Head of Service, Environment and Community Protection Manager

Implementation Date 30 September 2023

APPENDIX I - ENVIRONMENTAL ENFORCEMENT POLICY EXAMPLE

ENVIRONMENTAL ENFORCEMENT POLICY

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1. Introduction

This policy sets out clear guidelines for the enforcement officers working on behalf of the Council. It also sets out what individuals, businesses and the community as a whole can expect from the Council's Environmental Enforcement service and the key principles under which authorised officers will seek to achieve compliance with legislation. This includes how the Council will investigate, enforce and prosecute as part of its regulatory functions.

2. Principles of enforcement

Local authorities have a range of enforcement powers. Enforcement is any formal, or informal, action to prevent or rectify infringements of legislation. Whilst the enforcement options may differ where different areas of legislation are applied, the principles of application should remain consistent.

Enforcement includes visits, inspections, verbal and written advice on legal requirements and good practice, assistance with compliance, written warnings, the servicing of statutory notices, issuing fixed penalty notices, formal cautions, prosecution, seizure and detention, works in default, injunctions and liaison and co-operation with other enforcement authorities and organisations where appropriate.

The Council aims to carry out environmental enforcement in a fair, transparent, equitable and consistent manner.

All enforcement activities, including investigation and formal actions, will always be conducted in compliance with the Council's statutory obligations. Enforcement officers will act within the scope of their delegated authority.

The Council will engage with individuals, business or the community to educate and enable compliance. Securing compliance through legal process, by using all or any enforcement powers available may sometimes be necessary however.

If an individual, business or the community is not complying the Council will provide advice and guidance to help them do so. Where appropriate the Council will agree solutions and timescales for making improvements to secure necessary compliance. The use of formal enforcement powers or sanctions may well be necessary in the event of failure to comply with any regulated activity. In this regard the Council will make a proportionate response to the circumstances.

For the purposes of this policy the following definitions are given to the terms 'regulatory', 'enforcement' and 'officer':

'Regulatory' encompasses the Council's numerous powers and duties available.

'Enforcement' includes any action carried out under statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Statutory

Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations and conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of cautions and the making of applications to the Courts for Orders to control the conduct of individuals or organisations.

‘Officer’ means any person within the employment of the Council, or contracted by the Council to carry out investigative or enforcement roles within any service with a regulatory function and includes any officer within the legal services section who advises on or carries out enforcement matters on behalf of the Council.

3. Objectives

The Council aims to provide clear information and guidelines on individual responsibility via its website, policies, and communication campaigns (which will be in the form of leaflets, posters, press releases, residents magazines and so on).

The Council will not hesitate to take robust enforcement action against those who refuse to work with it, flout the law, commit serious breaches and risk causing serious harm.

The Council aims to employ a clear policy and consistent approach in the delivery of waste management and environmental enforcement duties.

The Council’s authorised enforcement officers will take appropriate enforcement action in accordance with this policy.

4. Scope of the Policy

This policy covers enforcement activities in support of the Council’s statutory duties for the maintenance of the street scene and the visual amenity of the local environment covering, but not limited to:

- responsible control, management and disposal of commercial and domestic waste
- street cleansing, control of litter and dog fouling
- sites which are detrimental to the amenity of a neighbourhood
- fly tipping
- graffiti and fly posting
- waste carriers licence
- abandoned and nuisance vehicles
- illegal skips and scaffolding
- highway offences
- Public Spaces Protection Order breaches (for example dog fouling)

The Council has key legislation which guides its actions in dealing with environmental offences in relation to this document:

- The Environmental Protection Act 1990
- Refuse Disposal (Amenity) Act 1978
- Road Traffic Regulation Act 1984
- Removal and Disposal of Vehicles Regulations 2002
- Clean Neighbourhoods and Environment Act 2005
- Public Spaces Protection Orders
- Town and Country Planning Act 1990
- Highways Act 1980
- Local Government (Miscellaneous Provision) Act 1982
- Community Protection Notice Crime and Policing Act 2014
- Anti-Social Behaviour Act 2003
- The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016
- Controlled Waste Regulations (England and Wales) 2015 and any other legislation relating to the environment.

These offer a wide range of powers to the Council. The method of enforcement used should be balanced to produce the highest reasonable standards of compliance within the least time.

- The Council’s enforcement measures contribute to the Council’s corporate priorities and objectives, enhancing the quality of life by helping to:
- maintain a clean and tidy Borough

- reduce waste and increase recycling
- enhance the quality of life in local neighbourhoods

The Council are committed to delivering our regulatory activities in a manner that is risk-based, proportionate and consistent and we aim to be transparent and accountable about our regulatory approach and activities, in accordance with the statutory principles of good regulation.

5. Enforcement Options

There are a number of options available to the Council:

Informal 5.1 Advice and guidance

Officers will seek to help individuals, existing and prospective businesses and other organisations to comply with legal obligations. This will be achieved by providing information and guidance to help resolve potential problems.

5.2 Informal warnings

Informal warnings may be issued to reinforce advice and guidance where minor breaches of the law have been discovered but where it was thought appropriate to not take formal action. These warnings can be verbal or written. Follow-up visits may be made to ensure that steps have been taken to rectify the problem. Warnings issued in respect of significant breaches of legislation will include time scales within which the breaches should be rectified and will always result in follow-up visits to ensure compliance.

Formal 5.3 Statutory notice

Some legislation provides for the service of statutory notices, which require a person, business or organisation to comply with specific legislation. The notice will explain what is wrong, what is required to put things right, the timescale in which to put things right, and what will happen if the notice is not complied with. In some circumstances, where a formal notice has been served, there may be a right of appeal against the Council's decision. In such cases, an explanation of the method of appeal will be provided at the time the notice is issued. In general, it is the Council's policy to either formally caution or prosecute individuals, business, or organisations who do not comply with a properly written and served statutory notice.

5.4 Fixed Penalty Notice (FPN)

FPNs can be issued for certain offences and allow individuals or businesses to discharge their liability for an offence, avoiding prosecution and a criminal record. Issued only when an offence has been committed, an FPN is a proportionate response where there is evidence to support prosecution if the offender fails to pay the fixed penalty. Payment of the FPN prevents any further action; no record of the FPN is kept except by the Council for up to three years. There is no formal appeal process for a FPN. If you disagree that you have committed an offence, you can decide not to pay the Fixed Penalty Fine and the matter will be decided by a Court.

5.5 Formal Caution

Under certain circumstances a formal caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. A formal caution is a serious matter and it will be recorded. In addition, it may be used to influence any decision on whether or not to prosecute should the individual, business, or organisation offend again. Formal cautions remain on record for a period of three years.

Formal cautions are intended to deal efficiently with certain offences, avoiding unnecessary appearances in court, and reducing the chance of re-offending. Before issuing a caution, there must be sufficient evidence of guilt to give a realistic prospect of conviction; and the offender must understand the significance of the formal caution and sign a declaration admitting the offence.

5.6 Prosecution

The Council will use discretion in deciding whether to initiate a prosecution and generally will only bring proceedings when it is considered to be in the public interest. A decision to prosecute will only be taken when there is sufficient evidence for a realistic prospect of conviction, and will take into account any statutory defence available to the defendant and any contributory factors which may preclude a successful prosecution. The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors. Advice will be sought from the Council's Legal Team.

5.7 Execution of Works in Default (where the recipient of a statutory notice has not complied with the

notice)

Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary in execution of that notice and recover the costs of doing so from the person responsible.

6. Juvenile Offenders

In law, a local authority can issue a FPN to anyone over the age of 10 if they appear to have committed an offence. The parents or guardians of offenders below the age of 10 can however be contacted to make them aware of their child's behaviour. Enforcement officers should use special procedures for offenders between the age of 10 and 17, working with the Community Development team, Community Safety team, and children's services.

7. Authorised enforcement officers

The Council's responsible officer, as laid down in the Council's Constitution will authorise officers in writing, specifying the limits of their authorisation. Persons other than Council employees may be authorised to act on its behalf, where it is legally permissible to do so, and the Council's responsible officer considers that the Council's objectives, policies and procedures will be applied. The identity or warrant card provided by the Council must be carried at all times whilst on duty, and should be made available for inspection upon request. Enforcement action will only be carried out by authorised officers who have received appropriate training and who have sufficient experience in environmental enforcement action. The Council will also work with the Police through the Police Accreditation Scheme to designate powers to officers where relevant to the role.

8. Appeals and complaints

If there is an option to appeal the process will be outlined on the notice. In the event of complaints concerning the conduct of an officer please refer to the Council's complaints policy.

9. General informationEqual and fair treatment

Enforcement practices are monitored, and reviewed, to ensure they remain fair and equitable. All enforcement action and investigations will be carried out in a manner that complies with the requirements of legislation and codes of practice governing the collection of evidence and investigatory powers.

This will include any surveillance activity which will comply with the Regulation of Investigatory Powers Act 2000, the Data Protection Act 2018, Information Commissioner's Office Guidance and the Surveillance Camera Commissioner's Guidance.

CCTV, photographic or video evidence

The Council employs both overt and covert CCTV use in its effort to protect public open spaces. The key aims and objectives are to encourage responsible use of facilities and to deter and detect crime.

Publicity

Whilst not a direct form of enforcement, the Council will seek to raise awareness and increase compliance levels by making public details of evidence of unlawful practice and any legal action taken where in their opinion it is appropriate to do so.

Policy review

This policy will be reviewed as and when new legislation comes into effect which may introduce new powers or actions for environmental enforcement.

APPENDIX 1 (to the policy)

Definitions of environmental offences and legislation

Fly tipping

There is no precise definition of fly-tipping other than the offences set out in section 33 of The Environmental Protection Act 1990, i.e. the illegal disposal of controlled waste. The Litter and Refuse Code of Practice published by DEFRA in 2006 notes that a single plastic sack of rubbish should usually be considered fly-tipping rather than litter.

The Hertfordshire Fly-tipping Group (HFTG) seeks to rationalise the definition of a fly-tip county wide for the purpose of reporting.

The recommendation is for example that, sacks placed next to wheeled bins on collection day should not be identified as fly tipping whereas sacks left out on non-collection day could be considered to be fly tipping. This aims to take account of common knowledge that a significant proportion of fly tipping incidents recorded each year stem from individuals acting in what they believe to be a reasonable manner and for Hertfordshire authorities to record this consistently.

Plastic bags left by a wheeled bin where it cannot reasonably be determined to originate from the same premises however could be considered a fly tip as could repeat offenders leaving side waste as a result of not engaging with the comprehensive recycling services now offered.

The HFTG also seeks to rationalise the level at which the Hertfordshire authorities fix the penalty for fly tips and agreement was reached at what is considered to be a proportionate response, falling within the £150 to £400 range set and taking account of fines for similar environmental offences.

Waste duty of care (domestic and commercial)

The duty of care legislation makes provision for the safe management of waste to protect human health and the environment.

The duty of care applies to anyone who imports, produces, carries, keeps, treats, disposes of, or are a dealer or broker that has control of controlled waste.

Section 34 (2A) of the Environmental Protection Act 1990 makes it a legal obligation or Duty of Care, for the occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it. More detail on this duty of care is set out in section 5 of the Waste Duty of Care Code of Practice.

For the purpose of applying this duty of care, household waste is generally considered to be any waste produced within a domestic property. This is not just regular black bin waste, but other material to be disposed of from a property such as old mattresses, furniture and household appliances.

Where waste comes from multiple individuals in the household, the duty of care applies to the individual occupier of the property who is arranging the transfer of household waste produced in that property.

It is a criminal offence if all reasonable measures are not taken to ensure an individual meets their duty of care. An individual could face prosecution and, on conviction, a fine and criminal record.

The Council may take the decision to issue a FPN for breaching the duty of care as an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. If an individual chooses to pay within the specified period, they cannot then be prosecuted for the offence.

Section 34 (1) of the Environmental Protection Act 1990

All businesses have a legal duty of care to manage waste correctly. This duty is not voluntary; all businesses are bound by statutory duty of care on waste requirements attached to the Environmental Protection Act 1990, section 34. Businesses are responsible for ensuring their waste is stored, managed and recovered or disposed of according to agreed guidelines.

The waste carrier must be authorised to take the waste for disposal.

All businesses must have two years' evidence of their waste management arrangements; this is known as a Waste Transfer Note or Duty of Care Certificate. Failure to provide this can result in a FPN or prosecution, where an unlimited fine can be imposed.

Waste receptacle notice

Section 46 Environmental Protection Act 1990

It is considered good practice to inform households about any issues related to the presentation of their waste either in the form of a letter or information notice. Where householders persist in failing to comply with the Council's waste policy and their actions cause, or is likely to cause a nuisance or is likely to have a detrimental effect on local amenities, the Council may follow three stages:

- a written warning (detailing how the rules have been broken, the impact of this action, what the householder is required to do and within what timeframe, and what will happen if they don't comply)
- a notice of intent (they may receive a fixed penalty and why, the cost of the fixed penalty, and that they have 28 days from the date of the notice to explain why they shouldn't have to pay a penalty)
- final notice (issued 28 days after the date on the notice of intent; advising why the fixed penalty has been issued; how they can pay, deadline for payment, if there is a discount for early payment; what happens if they do not pay; the appeal process).

Litter

The offence of leaving litter, defined in section 87 of the Environmental Protection Act 1990 as 'if any person throws down, drops or otherwise deposits in, into or from any place to which this section applies (which is any place in the open air to which public have access without payment and any covered place open on one side to a highway maintained at the public expense), and leaves it'.

Dog Fouling

Permitting your dog to foul and failing to remove the faeces in public open spaces.

Public Spaces Protection Order Section 3

A Public Spaces Protection Order (PSPO) is one of a number of tools and powers introduced by the Antisocial Behaviour, Crime and Policing Act 2014, used to address a range of anti-social behaviours in the particular area to which they apply.

PSPOs are aimed at ensuring that public spaces can be enjoyed free from anti-social behaviour. Failure to comply with either a prohibition or requirement of the order is an offence which carries criminal sanctions. Breaches of the order will be discharged by issuing a FPN set at £100 (with no discounted payment option). Persistent breaches may result in a summary conviction with a fine of up to £1,000.

The PSPOs cover dog control offences, alcohol related breaches, and nuisance vehicles.

Abandoned vehicles

Section 2 The Refuse Disposal (Amenity) Act makes it an offence to abandon a motor vehicle, or any part of a motor vehicle, on a highway or any land in the open air. This includes any trailer intended or adapted for use as an attachment to a motor vehicle.

There is no statutory definition of an abandoned vehicle and factors to be taken into account include, but are not limited to, current tax, MOT status, length of time at location and damage to or condition of the vehicle. The officer will assess the vehicle, taking the above into account, to decide whether it is abandoned.

The Council is under a duty to remove an 'abandoned' vehicle on any land in the open air, and can recover the costs of removal, storage, or destruction from the owner.

Nuisance Vehicles

Section 3 of the Clean Neighbourhoods and Environment Act 2005 makes it an offence to expose vehicles for sale on a road and a person is guilty of an offence if at any time they leave two or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale. Section 4 of the Clean Neighbourhoods and Environmental Act 2005 makes it an offence for a person to carry out repairs to a vehicle on a road unless they have been in an accident within the last 72 hours, or

have broken down and repairs are necessary.

Community Protection Notice

An authorised officer may issue a Community Protection Notice (CPN) to an individual aged 16 or over, or a body if satisfied on reasonable grounds that the conduct of the individual or body is having a detrimental effect of the quality of life of those in the locality, and that the conduct is unreasonable.

A CPN requires the individual or body to stop doing specified things; a requirement to do specified things; or a requirement to take reasonable measures to achieve specified results.

Untidy land notices

Section 215 of the Town and Country Planning Act 1990 - a local planning authority may use a maintenance notice (section 215) where the condition of land or buildings is considered to adversely affect the local amenity of an area.

NB: This is not an exhaustive list but is designed to provide an awareness of the types of environmental offences and legislation the Council will enforce.

APPENDIX 2 (to the policy)

Fixed Penalty Levels

The Council can set penalties for certain offences within specified limits and can demand payment within 14 days.

Offence	Penalty	Discounted penalty (if paid within 10 days)
Littering	£100	£75
Breach of Public Space Protection Orders	£100	N/A
Fly-tipping	£300	£200
Waste duty of care	£300	£200
Failure to produce a waste carriers Licence/transfer note	£300	£200
Failure to comply with a waste receptacle notice	£100	N/A
Abandoning a vehicle offence	£200	£120
Abandoning a vehicle (removal)	£150	N/A
Abandoning a vehicle (daily storage rate)	£20	N/A
Abandoning a vehicle (disposal)	£75	N/A
Nuisance parking	£100	N/A
Graffiti	£100	£75
Fly-posting	£100	£75
Breach of Community Protection Order	£100	N/A

APPENDIX 3 (to the policy)

Issuing Fixed Penalty Notices

Environmental Enforcement Officers should only issue a Fixed Penalty Notice (FPN) when all of the following apply:

- an offence has been committed
- an FPN is a proportionate response
- there is evidence to support prosecution if the offender does not pay the fixed penalty
- the offender understands why the FPN is being issued
- it is believed that the name and address offered by the offender are correct.

All FPNs must be issued in a manner proportionate to the situation and in accordance with this policy. A reasonable approach should be taken which may result in giving a warning rather than issuing a FPN. Warnings should be recorded detailing the reasoning behind the decision taken.

The Council's policy rules out the issuing of FPNs to persons believed to be suffering mental or physical ill health and disabled people with clear mobility difficulties.

In the case of offenders under the age of 18, details should be taken in order to monitor persistent offenders, and advice offered with regards to responsible disposal of litter.

Detailed information on the issuing of FPNs can be found at:
<https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>

APPENDIX 4 (to the policy)

Table of Environmental offences, legislation and enforcement options

Offence	Offence	Legislation	Relevant Section	Level of Penalty (Individual)	Level of Penalty (Commercial)
Fly-tipping	Illegal depositing of controlled waste	Environmental Protection Act 1990	Section 33	£100 Littering FPN (low level) £300 Fly-tipping FPN Prosecution unlimited fine	Prosecution
		Refuse Disposal (Amenity) Act 1978	Section 2	Prosecution	
Waste duty of care (domestic and commercial)	Failure to comply with duty of care (legal requirement) for householders and business	Environmental Protection Act 1990	Section 34	£300 FPN	FPN or Prosecution
				Prosecution unlimited fine	
Waste carriers' Licence	Businesses not having correct permissions to carry/store/dispose/transport of waste	Environmental Protection Act 1990	Section 34	£300 FPN	FPN or Prosecution
Commercial and domestic containerage offences	Residential and businesses not having correct storage/containerage facilities	Environmental Protection Act 1990	Section 46 & 47	£100 FPN	FPN or Prosecution
Commercial and domestic land condition offences	Land detrimental to local amenity	Environmental Protection Act 1990	Section 59	Prosecution	Prosecution
		Town and country Planning Act 1990	Section 215	Prosecution	Prosecution
		Community Protection Notice Crime and policing Act 2014		£100 prosecution or	Prosecution

Offence	Offence	Legislation	Relevant Section	Level of Penalty (Individual)	Level of Penalty (Commercial)
Community Protection Notices	Land detrimental to the local amenity/ anti-social behaviour	Community Protection Notice Crime and Policing Act 2014		£100 FPN or prosecution	£100 FPN or prosecution
Litter	Depositing litter	Environmental protection Act 1990	Section 87 & 88	£100 FPN, prosecution for non-payment	

		Clean Neighbourhoods & Environment Act 2005 (CNEA)	Part 3	As above	
Dog Fouling	Failing to clear up after your dog	Public Space Protection Order (PSPO)	Section 3	£100	
Graffiti	Caught in the act	CNEA 2005	Part 4	£100	
		Anti-Social Behaviour Act 2003	Section 43		
Fly-posting	Fly-posting found on the highway	Town & Country Planning Act 1990		Prosecution	
		Highways Act 1980	Section 132 (1)	£100 FPN	
Abandoned vehicles		Refuse Disposal (Amenity) Act 1976	Section 2	£200 FPN or prosecution	
		Road Traffic Regulations Act 1984			
		Removal and Disposal of Vehicle Regs 2002			
		CNEA	Part 2		
Nuisance vehicles	Cars for sale, commercial car repairs	CNEA 2005		£100 FPN or prosecution	
Illegal skips and scaffolds	Unlicensed	Highways Act 1989	Section 139		£100 or prosecution
Illegal Scaffolds	Unlicensed	Highways Act 1990	Section 169		£100 or prosecution
Highway offences	Builders' material, waste, projections, encroachment, contamination, obstructions of the highway.	Highways Act 1990 Part IX Lawful and Unlawful Interference with highways and streets	Various sections	Various levels of fines and prosecution	Various levels of fines and prosecution
Removing traders from the highway	Unauthorised traders/sellers on the highway	Local Government (Misc. Prov) Act 1982		Prosecution	

APPENDIX II - DEFINITIONS				
LEVEL OF ASSURANCE	DESIGN OF INTERNAL CONTROL FRAMEWORK		OPERATIONAL EFFECTIVENESS OF CONTROLS	
	FINDINGS FROM REVIEW	DESIGN OPINION	FINDINGS FROM REVIEW	EFFECTIVENESS OPINION
Substantial	Appropriate procedures and controls in place to mitigate the key risks.	There is a sound system of internal control designed to achieve system objectives.	No, or only minor, exceptions found in testing of the procedures and controls.	The controls that are in place are being consistently applied.
Moderate	In the main there are appropriate procedures and controls in place to mitigate the key risks reviewed albeit with some that are not fully effective.	Generally a sound system of internal control designed to achieve system objectives with some exceptions.	A small number of exceptions found in testing of the procedures and controls.	Evidence of non compliance with some controls, that may put some of the system objectives at risk.
Limited	A number of significant gaps identified in the procedures and controls in key areas. Where practical, efforts should be made to address in-year.	System of internal controls is weakened with system objectives at risk of not being achieved.	A number of reoccurring exceptions found in testing of the procedures and controls. Where practical, efforts should be made to address in-year.	Non-compliance with key procedures and controls places the system objectives at risk.
No	For all risk areas there are significant gaps in the procedures and controls. Failure to address in-year affects the quality of the organisation's overall internal control framework.	Poor system of internal control.	Due to absence of effective controls and procedures, no reliance can be placed on their operation. Failure to address in-year affects the quality of the organisation's overall internal control framework.	Non compliance and/or compliance with inadequate controls.

RECOMMENDATION SIGNIFICANCE	
High	A weakness where there is substantial risk of loss, fraud, impropriety, poor value for money, or failure to achieve organisational objectives. Such risk could lead to an adverse impact on the business. Remedial action must be taken urgently.
Medium	A weakness in control which, although not fundamental, relates to shortcomings which expose individual business systems to a less immediate level of threatening risk or poor value for money. Such a risk could impact on operational objectives and should be of concern to senior management and requires prompt specific action.
Low	Areas that individually have no significant impact, but where management would benefit from improved controls and/or have the opportunity to achieve greater effectiveness and/or efficiency.

APPENDIX III - TERMS OF REFERENCE**PURPOSE OF REVIEW:**

To provide assurance on the Council's environmental health services policies and procedures, assessing if they are up to date, accurate and robust and understood by staff. We will review case studies across a sample of different environmental service areas to ensure the Council is complying with its policies and procedures.

KEY RISKS:

Based upon the risk assessment undertaken during the development of the internal audit operational plan, through discussions with management, and our collective audit knowledge and understanding, the potential key risks associated with the area under review are:

- There are a lack of formal health and safety protocols, risk assessments and training within warden enforcement activities which could lead to unsafe practices
- Warden enforcement and work is not planned appropriately or prioritised correctly, which could lead to streets/premises being unclean or becoming unsafe and extra costs being incurred
- Reported incidents or complaints relating to warden enforcement activities are not appropriately prioritised, investigated or managed
- There is inadequate performance monitoring or escalation of issues to management.
- Enforcement protocols have not been defined, increasing the risk of inappropriate management practices
- There is lack of evidence that staff involved in enforcement have received appropriate training in the RIPA requirements, meaning they could unknowingly be exposing the Council to potential legal issues and reputational damage
- Risk profiling has not been carried out to identify high risks, resulting in enforcement activity not being directed to the areas of greatest risk
- Enforcement activity is not carried out in accordance with the Council's policies, including the issue of penalties and the collection of fines, leading to inconsistent practices.

SCOPE OF REVIEW:

The following areas will be covered as part of this review:

Environmental Health

- Review of Health and Safety policies, to ensure they are appropriate, available to staff and regularly reviewed and updated; and review of risk assessment protocols to ensure that risks are identified, scored, included on a relevant risk register and mitigated
- Review of warden enforcement schedules and formal work plans
- Sample testing of incidents/complaints to ensure appropriate actions are taken following the reporting of a dog fouling, antisocial behaviour or fly-tip waste incident or complaint, including prioritisation, response protocols, targeted actions, investigations, mitigations and follow-up actions and the documentation of any reasons for delays
- Review of monitoring arrangements to ensure regular performance reports are prepared, including all accidents, incidents and near misses; and that reports are presented to the appropriate monitoring committees, with follow up of actions raised.

Enforcement

- Review of defined enforcement protocols to ensure they take account of appropriate national guidance on warden enforcement and highlight appropriate actions to be taken for dog fouling, antisocial behaviour and fly-tip waste incidents
- Review of central staff training tracker, supported by appropriate evidence to ensure staff involved in warden and selective licensing enforcement have completed induction and refresher training or relevant continual professional development has been undertaken, to ensure compliance with current legislation (including RIPA)
- Review of risk profiling processes that identify areas with high activity of dog fouling, antisocial behaviour and fly-tip waste incidents, to ensure that enforcement is carried out where required, within appropriate timeframes and follow up action taken
- Sample testing of enforcement activity to ensure that it is carried out in accordance with the Council's policies/protocols, including investigation and the issue of fixed penalty notices and section 108 notices by the Public Protection officers, and prosecutions and collection of fines by Environmental Health Services.

FOR MORE INFORMATION:

Greg Rubins

Greg.Rubins@bdo.co.uk

The matters raised in this report are only those which came to our attention during the course of our audit and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. The report has been prepared solely for the management of the organisation and should not be quoted in whole or in part without our prior written consent. BDO LLP neither owes nor accepts any duty to any third party whether in contract or in tort and shall not be liable, in respect of any loss, damage or expense which is caused by their reliance on this report.

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